

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS**

DAVID ALLEN LANE,

Petitioner,

v.

**CIVIL ACTION NO. 2:13-CV-6
(BAILEY)**

GEORGE E. TRENT, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. By Local Rule, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation (“R&R”). Magistrate Judge Kaull filed his R&R on January 28, 2013 [Doc. 5]. In that filing, the magistrate judge recommended that this Court dismiss without prejudice the petitioner’s Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 [Doc. 1] because the petitioner raises claims that are not relevant to a § 2241 petition and instead should be raised in a lawsuit pursuant to 42 U.S.C. § 1983 and accompanied by the requisite filing fee [Doc. 5 at 2-3].

Pursuant to 28 U.S.C. § 636 (b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge’s findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or

recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Kaull's R&R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b). The docket sheet reflects that service was accepted on January 30, 2013 [Doc. 7]. To date, no objections have been filed.

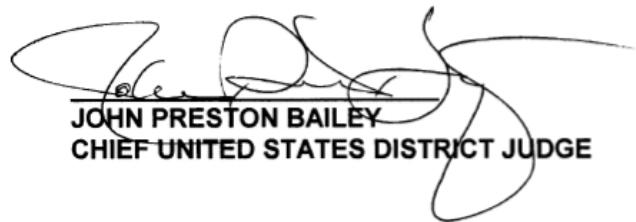
Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's Report and Recommendation [**Doc. 5**] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. As such, **DISMISSES without prejudice** the petitioner's Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 [**Doc. 1**]. Therefore, this matter is hereby **ORDERED STRICKEN** from the active docket of this Court. The Clerk is directed to enter a separate judgment in favor of the defendant.

As a final matter, this Court finds that the petitioner has not made the requisite "substantial showing of the denial of a constitutional right " for a certificate of appealability; accordingly, this Court hereby **DENIES** a certificate of appealability to the extent that the petitioner might seek one from this Court. See 28 U.S.C. § 2253(c)(2).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: February 25, 2013.



JOHN PRESTON BAILEY
CHIEF UNITED STATES DISTRICT JUDGE